



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

March 15, 2010

Certified Mail 7001 0320 0006 0192 5831
Return Receipt Requested

LU-9J

Bud Smith, Director
Environmental Control Department
Severstal Wheeling, Inc.
1134 Market Street
Wheeling, WV 26003

Re: May 29, 2008, Request for Information and Response dated July 3, 2008
Severstal Wheeling, Inc., Martins Ferry Facility
EPA ID No. OHD 101 48 231

Dear Mr. Smith:

This letter addresses the July 3, 2008, response of Severstal Wheeling, Inc. (then Wheeling Pittsburgh Steel Corporation), to the U.S. Environmental Protection Agency's May 29, 2008, information request under Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, regarding hazardous waste issues at Severstal's (your) Martins Ferry, Ohio, facility. Our assessment is that your response is deficient. You appear to have withheld information and documents based on an argument that EPA lacks authority to request information regarding solid wastes that may contain hazardous waste constituents, but that you have not admitted are hazardous wastes. Your argument is incorrect.

As Congress has noted, "EPA's authority under [RCRA Section 3007] is not limited to wastes that are 'identified or listed' as hazardous, but rather includes all wastes that meet the statutory definition of hazardous waste." H.R. Rep. No. 198, 9th Cong., 1st Sess. 47 (1983). RCRA defines hazardous waste in part as any solid waste or combination of solid wastes that "may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." 42 U.S.C. § 6903(5). Thus a material can by its nature constitute hazardous waste, even where no formal action identifying it as a hazardous waste has been taken. For example, solid wastes for which you have never made hazardous waste determinations or on which you have never conducted analyses may still constitute hazardous waste. Accordingly EPA's authority extends to all such solid wastes.

Further, under RCRA Section 3007 EPA has authority to request, and you must provide information, regarding solid wastes containing hazardous constituents and which you argue are non-hazardous. EPA has the authority and in fact the responsibility to protect human health and the environment by assessing for itself a solid waste's status as hazardous. For example, in solid waste listing determinations:

... the presence of any [hazardous] constituents in the waste is presumed to be sufficient to list the waste unless after consideration of the designated multiple factors, EPA concludes the waste is not hazardous. [45 Fed. Reg. 33084, 33107 (May 19, 1980) (final rule regarding hazardous waste identification and listing)]

Your position would enable those possessing industrial solid waste to avoid RCRA regulation by simply asserting that a waste is non-hazardous. RCRA regulations contain no such exemption and in fact require respondents in enforcement litigation to affirmatively prove that any alleged exemption applies. See 40 C.F.R. § 261.2(f). Thus EPA may request information regarding a solid waste that may contain hazardous constituents, regardless of whether you admit that the solid waste contains hazardous constituents or constitutes a hazardous waste. Older facilities like your Martins Ferry facility showcase this issue best, where decades of industrial waste management have occurred both before and after RCRA's enactment.


Enclosure 1 to this letter sets forth without limitation certain areas where your July 3, 2008, response is deficient. You must submit this remaining information within 21 calendar days of receiving this request, to the United States Environmental Protection Agency, Land & Chemicals Division, 77 West Jackson Boulevard, LU-9J, Chicago, Illinois 60604, Attention: Michael Mikulka. Providing this information will not cure your violations of RCRA Section 3007 for failing to comply with EPA's May 29, 2008, information request before the date of your second response. As the information request noted, failing to comply with a Section 3007 information request may subject you to an enforcement action under Section 3008 of RCRA, 42 U.S.C. § 6928. As EPA's May 29, 2008, information request remains outstanding, all of its notices, requirements, instructions and definitions continue to apply. A copy of EPA's May 29, 2008, information request is enclosed for your convenience.

Your July 3, 2008, response also makes a blanket claim that all accompanying information constitutes your confidential business information (CBI) under 40 C.F.R. Part 2. The alleged CBI includes correspondence from EPA to you, as well as communications from you to the State of Ohio apparently unaccompanied by CBI claims. EPA has already sent you separate correspondence to address this CBI issue.

Your July 3, 2008, response also requests access to or copies of all documents in a reference list accompanying EPA's May 29, 2008, information request. Most of these documents are correspondence of various kinds, either from or to you. Please consult your files for these documents, then approach EPA regarding your remaining information needs.

If you have any questions, please contact Michael Mikulka of my staff at (312) 886-6760.

Sincerely,

A handwritten signature in black ink, appearing to read "Jose Cisneros". The signature is fluid and cursive, with the first name "Jose" and last name "Cisneros" clearly distinguishable.

Jose Cisneros, Chief
Remediation & Reuse Branch
Land and Chemicals Division

cc: Gerald P. Duff, Fregiato, Myser & Davies
Kenneth S. Komoroski, K&L Gates

Enclosure 1 - Response deficiencies

Enclosure 2 - May 29, 2008, RCRA information request from EPA

Enclosure 3 - December 9, 1988, letter from OEPA to WPSC

Enclosure 4 - Martin's Ferry Hazardous Waste Contingency Plan May 1999

bcc: Kris Vezner, Associate Regional Counsel, C-14J

Enclosure 1
Response to Information Request Deficiencies

Severstal Wheeling, Inc.
Martins Ferry Facility
1001 Main Street
Martins Ferry, Ohio

The general instructions of the U.S. Environmental Protection Agency's May 29, 2008, information request under Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, regarding hazardous waste issues at Severstal Wheeling, Inc.'s (then Wheeling Pittsburgh Steel Corporation's), Martins Ferry, Ohio, facility, continue to apply. You should accordingly follow those instructions in correcting the deficiencies noted below. Note that those instructions include certification requirements, which apply to your submissions correcting the deficiencies noted below.

This enclosure refers to the above information request as "EPA's request" and Severstal's (your) July 3, 2008, response to that request as "your response."

The request numbers below correspond to request numbers from EPA's request for which your response was deficient. This enclosure does not claim to list all request numbers from EPA's request for which EPA believes you provided a deficient response.

1. Provide simplified process flow diagrams for all past or former processes, as requested. Your response appears to depict only current processes.
3. Your response only identified seven solid waste streams. Verify that you have provided the information requested. Your response does not state whether you have provided all determinations for all solid wastes that you generated at the Facility as of May 2008. With respect to the seven waste streams identified, waste determinations were only provided for five waste streams. Provide current waste determination information for the maintenance painting hazardous waste identified, and for the "non-hazardous" rubber roll grinding waste identified.
4. Attachment 9 was provided and is a map of existing hazardous waste storage locations. You were also requested to identify on that map the locations where solid wastes are generated as identified in item 3. You identified four such locations in item 3. Those locations need to be identified on a copy of Attachment 9.
6. You were asked to provide a description and map of current storm water drains, infrastructure and discharge points. No description was provided. You provided a partially legible map with no supporting explanation. Please provide a legible map and the description of the current storm water drainage system, infrastructure and discharge points. In correspondence with OEPA, you stated that Outfalls 003 and 004 were permanently sealed. However, the lines are shown on the map that you provided. Have the lines been removed? If not, how is storm water

24. Provide the information requested. Your response does not provide the status and investigation of the old buried clay pipeline, referenced during the April 8, 2003, CEI, as of May 2008.
26. How would oil be removed in the event of a spill if the oil skimmer was not operating?
27. Provide the information requested. A copy of the December 9, 1988, letter from the OEPA, as well as a copy of your 1999 Contingency Plan, for your reference.
28. Provide the information requested. Your response does not state 1) whether you performed any sampling in or around the stained soils, either inside the fence of or adjacent to the Plant 1 electrical substation; or 2) the cause of observed staining outside the substation fence. Regarding the staining outside the substation fence, EPA notes that it pointed out this staining to your representative during EPA's April 1, 2008, inspection of the Facility. This staining is apparent in photos P4010010 and P4010011 from Camera 1.
29. Provide the information requested. Your response provides no requested information. EPA did not limit its request to formal studies or analyses. Information may come from sources including any document, as well as the knowledge or belief of any of your employees with relevant information.
30. Provide the information requested. Your response provides no information regarding any testing of the yellow drippage or efforts to identify the impacted area.
- 31-38. Provide the information requested. Your response provides no information requested. Your response also mischaracterizes both the relevant law and facts. EPA has authority under Section 3007 of RCRA to request information regarding materials leaking from underground storage tanks (USTs), where those wastes such as gasoline may contain hazardous waste constituents. The Ohio Department of Commerce's regulation of USTs pursuant to an EPA-approved program under Subchapter IX of RCRA does not pre-empt federal regulation of hazardous waste. In fact, RCRA explicitly provides that EPA may continue to enforce those UST regulations. See Section 9006 of RCRA, 42 U.S.C. § 6991e. Accordingly your assertion that USTs are exempt from RCRA regulation is incorrect. Nor may you refuse to respond to a Section 3007 information request because EPA may be able to obtain the requested information from an alternative source.

Additionally, only requests 31 and 32 ask for information regarding underground storage tanks. You have articulated no basis for withholding information to requests 33-38.